**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO.121 OF 2006**

Dattatraya Waghere ...Applicant

Versus

Gorakh Disle & Ors. ...Respondents

Shri N.V.Walawalkar for Shri Girish B. Badige for the Applicant.
Shri G.S.Godbole for the Respondent Nos.1,4,6,8 and 10 to 13.

**CORAM : ABHAY S.OKA, J.**
**DATED : APRIL 16, 2007.**

**P.C.:**

1. Heard learned senior counsel appearing for the Petitioner. The Petitioner is the Defendant in a suit filed by the Respondents for injunction simplicitor restraining the Petitioner from demolishing the suit property without following due process of law. The suit was filed in civil court. The contention of the Petitioner is that he was the landlord of the Respondents-Plaintiffs and therefore in view of section 33(1)(b) of the Maharashtra Rent Control Act, 1999 only the court of Small Causes will have jurisdiction to entertain the suit. The learned trial Judge has answered the issue of jurisdiction framed at the instance of the Petitioner in favour of the Respondents-Plaintiffs.

2. The learned senior counsel appearing for the Petitioner has invited my attention to the averments made in the plaint. He pointed out that the Respondents were claiming to be tenants of Shri Balkrishna Waghere and two others. He placed reliance on order dated 05th May, 2000 passed by the civil court in a suit filed by the said Balkrishna Waghere and two others against the Petitioner. The said order was passed by which Application for temporary injunction filed by the said Balkrishna Waghere and two others was rejected. He submitted that there is a finding recorded in order dated 05th May, 2000 to the effect that the said Balkrishna Waghere and two others are not the landlords and the Petitioner herein is the landlord of the Respondents. He, therefore, submitted that the impugned order is illegal which calls for interference.

3. I have considered the submissions. It is a well settled position of law that issue of jurisdiction is to be decided on the basis of averments made in the plaint. The Respondents have come up with the case that their landlords are the said Balkrishna and two others and therefore, the present Petitioner (Defendant) has no

right to interfere with the possession of the Respondents. On plain reading of the plaint it is not a suit governed by the section 33 of the Maharashtra Rent Control Act, 1999. The finding relied upon by the learned senior counsel appearing for the Petitioner in order dated 05th May, 2000 is only a prima facie finding recorded while deciding an Application for temporary injunction. Therefore, the said finding will not help the case of the Petitioner.

4. In view of the aforesaid position, I find no fault with the view taken by the learned trial Judge while deciding the issue of jurisdiction. There is no merit in the revision Application and the same is rejected. It is made clear that no adjudication is made as regards the title of the parties to the suit property. The said issue is kept open. It will be always open for the trial Court to pass an appropriate order on the basis of finding recorded as regards title to the property and existence of landlord-tenant relationship on the basis of evidence which may be adduced in the suit.

**JUDGE**